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FEDERAL COMMUNICATIONS COMMISSION
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September 23, 2002

EX PARTE PRESENTATION

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W. TW-A325
Washington, D.C. 20554

Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128; IXC Over-Recovery of Compensation Payments

Dear Ms. Dortch:

In this letter, submitted on behalf of the American Public Communications Council ("APCC"), we review and analyze the evidence previously submitted in this proceeding regarding interexchange carriers' ("IXCs") measures to recover from their own customers the dial-around compensation paid to payphone service providers ("PSPs")during the Interim Period (November 7, 1996 – October 6, 1997) and Intermediate Period (October 7, 1997 – April 21, 1999). The evidence conclusively refutes the claims of AT&T and Sprint, in their recent *ex parte* letters,[1] that they failed to recover their compensation payments for the Interim and Intermediate periods. In fact, the evidence, most of which was filed in this proceeding in 1998 and 1999, shows that these IXCs recovered their compensation payments several times over. Their "cost recovery" measures generated profits for AT&T and Sprint that greatly exceeded the amount of their compensation payments.

I. AT&T OVER-RECOVERED COMPENSATION PAYMENTS

AT&T asserts, without any supporting evidence, that it did not *fully* recover from its customers the cost of its dial-around compensation payments in either the Interim Period or the Intermediate Period. AT&T Double Recovery *Ex Parte* at 2. Of course, even if AT&T could support this claim, its entitlement to a refund, if any, should not exceed the amount AT&T failed to recover. But AT&T has not shown that *any* of its compensation

[1] *See* AT&T's *ex parte* letter dated August 23, 2002 ("AT&T Double Recovery *Ex Parte*") and Sprint's *ex parte* letter dated September 5, 2002 ("Sprint Double Recovery *Ex Parte*").

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payments for these periods went unrecovered. In fact, the evidence of record shows clearly that, in both periods, AT&T recovered far more than its compensation payments.

A. Interim Period

With respect to the Interim Period,[2] AT&T merely asserts that a refund would not double-recover its compensation payments, implying that it has not already fully recovered its payments. AT&T Double Recovery *Ex Parte* at 2. AT&T provides no evidence or even argument to support its claim. AT&T's silence regarding this period is not surprising: It has long been a matter of record in this proceeding that beginning in February 1997 – less than two months after making its first compensation payment – AT&T instituted a series of general rate increases *for the express purpose of recovering its payphone compensation payments.*[3] In fact, as Frost & Sullivan demonstrated in a study submitted in this proceeding in 1998, as a result of these general rate increases alone, AT&T grossly *over-recovered* its compensation payments during the Interim Period. See Attachment 1 ("F&S Study"). Access charge savings directly related to payphone compensation even further enhanced AT&T's profits from payphone compensation "cost recovery."

1. AT&T's General Rate Increases

Specifically, effective February 27, 1997, AT&T increased its rates for all toll-free services by 3%, generating approximately $16 million in additional monthly revenues, and increased its business calling card rates by $.15 per call, generating another $4.67 million in monthly revenues. F&S Study at 6. *See also* Attachments 2 (AT&T's FCC tariff filing) and 3 (*USA Today* report that the increase was instituted to recover AT&T's payphone compensation payments). Effective May 1, 1997, AT&T further increased its rates for interstate toll-free services by 7%, generating about $30 million additional monthly revenue, raised its rates for international business service by 2%, generating $7.1 million additional monthly revenue, and raised its rates for interstate outbound services by 2%, generating about $17 million additional monthly revenue. *See* F&S Study at 6. *See also* Attachment 4 (AT&T's FCC tariff filing). Again, AT&T made clear that the purpose of the rate increases was to recover AT&T's payphone compensation costs. *See* Attachment 5

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[2] AT&T's cost recovery during the Interim Period is very relevant to the Commission's overall assessment of the equities involved in a true-up. In a true-up, the refund AT&T would claim from independent PSPs for the Interim Period would be twice as large as its refund from independent PSPs for the Intermediate Period.

[3] Similar kinds of rate increases were instituted by other IXCs, such as MCI and Sprint, who were required to pay compensation during the Interim Period. *See* Petition of the Colorado Payphone Association for Partial Reconsideration of Third Report and Order at 24 (April 21, 1999) ("CPA Petition"); Attachments 6, 12 and 19.

(AT&T press release describing the increases), 6, and 7 (trade press articles on the increases)("As a direct consequence of the new [payphone compensation] rules, AT&T increased its interstate toll-free "800" business rates by 7 percent and its business outbound rates by 2 percent to recover its share of the payments to pay-phone operators – estimated at nearly $60 million per month[4] for AT&T alone").

All together, these general rate increases generated additional revenues of $75 million per month. Even taking account of the fact that these general rate increases did not take effect at the beginning of the year, Frost & Sullivan found that AT&T's revenue in 1997 from these rate increases alone – without considering any additional revenue generated by AT&T's per-call payphone surcharges – totaled about $642 million. F&S Study at 6.

2. <u>AT&T's Access Charge Savings</u>

In addition, the removal of LEC payphone subsidies and costs from interstate access charges, effective April 15, 1997,[5] directly reduced IXCs' access charge payments by about $250 million annually, on a recurring basis. *See* CPA Petition at 24 (April 21, 2002). As AT&T had roughly a 44% share of the interstate long distance market during this period,[6] about 44% of the savings, *i.e.*, $110 million annually or $9.17 million per month, belonged to AT&T. In 1997, these cost savings from access charge reductions were in effect for 8.5 months. Therefore, AT&T's access charge cost savings in 1997 totaled about $78 million ($9.17 million x 8.5 months). Thus, AT&T's general rate increases combined with its

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4 The $60 million per month estimate includes projected payments to local exchange carrier ("LEC") PSPs, who became eligible for payphone compensation payments on April 15, 1997, after they terminated their access charge subsidies to their own payphones. *See* note immediately following. While AT&T may have estimated that its compensation payments would reach almost $60 million per month, in reality – due to the court of appeals decision vacating the prescribed compensation rate – AT&T was able to reduce its compensation payments to about $15 million per month. (This estimate is based on an extrapolation from the payments received by APCC Services during the latter part of the Interim Period, when AT&T and other IXCs unilaterally decided for themselves what was an appropriate rate of compensation. It reasonably assumes that AT&T did not pay other PSPs, such as LEC PSPs, at a higher rate than it paid independent PSPs.) (Footnote added).

5 This replacement of access charge subsidies by payphone compensation was mandated by Section 276 of the Act. 47 U.S.C. 276(b)(1)(B).

6 *See* FCC, Common Carrier Bureau, Industry Analysis Division, Statistics of the Long Distance Telecommunications Industry, Table 8 (January 2001). AT&T's share of the market for toll services provided by IXCs is a reasonable approximation of its share of interstate access charges.

reduced access charge payments netted AT&T about $84 million per month ($75 million + $9.17 million = $84.17 million), and about $720 million ($642 million + $78 million = $720 million) for the year 1997.

By contrast, AT&T's actual payments for the Interim Period[7] did not total more than about $137 million for the 11 months of that period.[8] In other words, AT&T's payphone compensation cost recovery efforts for the Interim Period "cleared" $583 million ($720 million - $137 million = $583 million), a profit of 425% on $137 million in payments. Even after a true-up, AT&T's total payment for the Interim Period is unlikely to exceed about $175 million,[9] leaving AT&T with a profit of at least $545 million ($720 million - $175 million) – a 311% profit on $175 million in payments.

The $720 million in revenues from AT&T's payphone compensation "cost recovery" efforts does not include revenues gained by AT&T from its specific per-call payphone surcharges, which it began assessing June 1, 1997. *See* Attachments 8, 9, 10 (AT&T's FCC tariff filings and sample state tariff filing), and 11 (AT&T press release). Nor does it include AT&T's savings from the termination of *intra*state access charge subsidies of LEC payphones, also required by Section 276. 47 U.S.C. 276(b0(1)(B).[10]

B. Intermediate Period

The AT&T Double-Recovery *Ex Parte* argues that AT&T failed to recover its dial-around costs in the Intermediate Period because it was unable to assess per-call payphone

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[7] Due to the time lag in quarterly payphone compensation payments, AT&T's payments for the Interim Period, which ran from November 1996 to October 1997, were not due until the end of each calendar quarter in 1997. Thus, it is appropriate to treat AT&T's revenue generated in 1997 as recovery of its Interim Period access charge payments.

[8] This estimate extrapolates from the record of payments to APCC Services during the Interim Period, and assumes that AT&T paid the LEC PSPs, who became eligible for compensation in the last half of the period, at the same rate as it paid independent PSPs during that part of the period.

[9] In its May 23, 2002 ex parte, APCC estimated AT&T's adjusted Interim Period compensation payment per phone. *See* Allocation of IXC Shares, Ex Parte Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer, Robert F. Aldrich and Robert N. Felgar at 7 (May 23, 2002), Att. 3. AT&T's total payment is based on multiplying this figure by an estimate of total payphone lines.

[10] It would also be appropriate to include in AT&T's cost recovery its savings on 0+ commission payments due to payphone callers' use of access codes and 800 numbers as an alternative to 0+ calling. Frost & Sullivan estimated the IXC industry's savings on 0+ commissions in 1997 to be $371.5 million. *See* F&S Study at 3.

surcharges on customers for calls made from 30% of all payphones because AT&T did not receive FLEX ANI coding digits for these phones. AT&T claims that despite its inability to assess surcharges on many calls, it nevertheless paid independent PSPs compensation for the calls – presumably by paying the surrogate payment prescribed by the FCC.[11] AT&T baldly states, without any evidentiary support, that even after a true-up for the Intermediate Period there would be a shortfall of $150 million in AT&T's recovery of its Intermediate Period dial-around compensation payments.[12]

Because AT&T does not provide any supporting evidence for its claimed losses, AT&T's assertions should be disregarded in any event. But in any event, the record in this proceeding makes clear that AT&T's claim of inability to recover its compensation costs is devoid of merit. This can be easily shown in several different ways, any one of which is sufficient to refute AT&T's claim.

1. AT&T's Excess Cost Recovery from the Interim Period

First, as shown above, before its Intermediate Period compensation payments even began, AT&T had reaped around $583 million in profits from payphone compensation "cost recovery" measures for the Interim Period, and will retain some $545 million of this profit even after making the net payments required in the planned Interim Period true-up. This $545 million profit, by itself, is easily sufficient to cover AT&T's alleged $150 million shortfall in cost recovery for the Intermediate Period. Thus, even taking at face value AT&T's claim of a $150 million shortfall for the Intermediate Period, AT&T would retain a healthy profit of some $400 million on its payphone compensation payments for the two periods as a whole. But in fact, as shown below, there is no $150 million shortfall; rather, notwithstanding any real or imagined losses from FLEX ANI failures, AT&T continued to make a healthy profit on its payphone compensation cost recovery measures during the Intermediate Period, just as it did during the Interim Period.

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11 After the LECs failed to meet the FCC's deadline for installation of the FLEX ANI capability that IXCs said they needed in order to track calls from the "smart" payphones used by independent PSPs, the FCC required those IXCs who could not otherwise track the calls to pay owners of "smart" payphones at a flat "surrogate" rate, which was to be set based on the amount of compensation that IXCs paid to the average RBOC payphone in the same period. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, 13 FCC Rcd 10893, ¶ 12 (1998).

12 AT&T asserts, without *any* supporting documentation, that "[e]ven when taking the retroactive adjustments into account, AT&T will remain substantially under compensated for the true-up periods by more than $150 million." AT&T Double Recovery *Ex Parte* at 2.

2. AT&T's Access Cost Savings

Second, AT&T's shortfall claim disregards the fact that AT&T continued to enjoy its recurring access charge cost savings during the Intermediate Period, savings which were directly attributable to payphone compensation and which were ***also sufficient, standing alone***, to wipe out the alleged $150 million shortfall. As discussed above, in 1997 about 44% of the IXC industry's $250 million annual access charge savings, or $110 million, went to AT&T. Taking into account AT&T's declining share of the interstate market (roughly 42% during the Intermediate Period),[13] it is reasonable to project that about 42% of the interstate access charge savings went to AT&T during the following 18.5 months, which is an appropriate cost recovery period for the Intermediate Period.[14] AT&T still saved about $105 million annually (42% of $250 million = $105 million), which is $8.75 million per month, or about $162 million (18.5 months x $8.75 million) for the Intermediate Period as a whole. Thus, AT&T's access charge savings alone were also sufficient to cover its entire $150 million "shortfall".

3. AT&T's General Rate Increase

Third, AT&T's alleged shortfall ignores the fact that its general rate increases, described above, instituted by AT&T in 1997 expressly for the purpose of recovering the cost of dial-around compensation, continued in effect during the Intermediate Period, in addition to its payphone-specific surcharges. Although AT&T promised to roll back these increases if it obtained a reduction in the compensation rate (*see* Attachment 5), AT&T has never shown that it rescinded *any* of its general compensation-related rate increases at any time in the Intermediate Period.[15] Of course, as these rate increases were not payphone-specific, AT&T's claimed problems with FLEX ANI did not prevent it from collecting the revenue generated by these general rate increases. As in the Interim Period, these rate increases were by themselves sufficient to generate for AT&T a healthy profit on its dial-around compensation payments for the Intermediate Period.

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[13] AT&T's share of the market for toll services provided by IXCs was 43.1% in 1998 and 40.7% in 1999, for a weighted average of 42.25% for the Intermediate Period cost recovery period, which we have defined as January 1, 1998 through July 15, 1999. *See* note 14 below.

[14] Allowing an 18.5-month cost recovery period for the 18.5-month Intermediate Period, and timing the cost recovery period to begin January 1, 1998 (the end of the shortened cost recovery period assumed above for the Interim Period), AT&T's cost recovery period for the Intermediate Period would end July 15, 1999.

[15] The only compensation related rate increase that was ever modified downwards, to APCC's knowledge, was the payphone surcharge, which AT&T, in November 1997, reduced from the original $.35 level to $.30 per call. *See* Attachment 12 (notice to AT&T customers).

During that period, AT&T's payments were in the neighborhood of $27 million per month, or about $500 million for the 18.5 months of the Intermediate Period.[16] As discussed above, the Frost & Sullivan study showed that AT&T's general rate increases generated revenues of about $75 million per month during 1997. FCC statistics indicate that AT&T's share of the IXC toll market declined from 1997 to 1998-99, so that its share of the market during the Intermediate Period was about 95% of its share of the market during the Interim Period. *See* FCC, Common Carrier Bureau, Industry Analysis Division, Statistics of the Long Distance Telecommunications Industry, Table 8 (January 2001). Even if AT&T's 1997 general rate increases accordingly generated 5% less monthly revenue in the Intermediate Period than in the Interim Period, AT&T still gained about $71 million per month from its general rate increases, or roughly $1.3 billion ($71 million x 18.5 months = $1.31 billion) for the Intermediate period as a whole – for a profit of about $800 million ($1.3 billion - $500 million), or 160% profit on AT&T's $500 million in payments. If AT&T's $162 million in access charge cost savings are included, AT&T recovered roughly $1.5 billion in "cost recovery" for Intermediate Period payments, for a profit of about $1 billion, or 200%.

4. AT&T's Payphone-Specific Surcharges

But that $1 billion is only part of AT&T's profit. AT&T acknowledges that it succeeded in recovering its $.30 payphone surcharges from some 70% of the payphones. This payphone surcharge was instituted separately from AT&T's general rate increases described above. *Compare, e.g.*, Attachment 5 (April 30, 1997 press release introducing second round of AT&T's general rate increases, effective May 1, 1997) ***with*** Attachment 11 (May 30, 1997 press release introducing AT&T's first payphone surcharge, effective June 1, 1997). Thus, ***in addition to*** the $1.5 billion recovery discussed above, AT&T ***also*** recovered more than 70% of its $.284 compensation payments, or $350 million (.70 x $500 million = $350 million). This increases AT&T's total Intermediate Period "cost recovery" to $1.85 billion, and increases its total profit for the Intermediate Period to $1.35 billion, or 270% of its payments.[17]

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[16] This estimate is based on extrapolation from AT&T's payments to APCC Services clients, and assumes that those payments are representative of AT&T's payments to the payphone industry as a whole. The $500 million estimate is consistent with the total payments that can be inferred from AT&T's claim that its alleged $150 million shortfall represents uncollected surcharges on calls it received from 30% of all payphones (30% of $500 million = $150 million).

[17] As similarly noted above in connection with the Interim Period, the $1.85 billion cost recovery figure for the Intermediate Period does not include AT&T's recurring savings from the termination of access charge subsidies of LEC payphones in state tariffs. The figure also does not account for AT&T's savings on 0+ commission payments due to (footnote continued on next page)

In short, AT&T did not suffer any $150 million cost recovery ***shortfall*** for the Intermediate Period; it gained at least a $1.35 billion cost recovery ***profit.*** If AT&T receives an Intermediate Period refund, these exorbitant profits will simply increase even more.

5. AT&T's FLEX ANI Claims

In light of its 270% profit from documented compensation-related rate increases and cost savings during the Intermediate Period, AT&T's unsupported and belated claim of a $150 million "shortfall" for the Intermediate Period rings exceedingly hollow. Moreover, there is no indication that AT&T ever sought compensation for these alleged losses. If AT&T lost over $150 million as it alleges because of LECs' failure to provide FLEX ANI, one would expect that AT&T would have pursued enforcement action at the Commission or district court.[18] At a minimum, one would have expected AT&T to have limited its losses, e.g., by adopting alternative identification methods such as those used by other IXCs who applied surrogate payments to far fewer payphones, AT&T, however, apparently did not pursue any action at all.

AT&T's failure to pursue enforcement action, or any other action to mitigate its damages,[19] does more than cast even more doubt on AT&T's allegations regarding losses

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payphone callers' use of access codes and 800 numbers as an alternative to 0+ calling. Both these cost savings should also be included in a comprehensive estimate of AT&T's cost recovery.

[18] Although initially waived, the FLEX ANI rule was in effect for most independent payphone lines for most of the Intermediate Period. *See* 47 C.F.R. § 64.1310(a); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, 13 FCC Rcd 4998, 5001, ¶ 3 (CCB 1998) ("FLEX ANI Order").[18] If AT&T was unable to track the calls it was either because AT&T violated Commission rules and failed to order FLEX ANI from the relevant local exchange carriers ("LECs"), *see* 47 C.F.R. § 64.1310(a) (requiring IXCs to track or arrange for the tracking of dial-around calls), or because the LECs violated Commission rules and did not offer FLEX ANI to IXCs. *See* 47 C.F.R. § 64.1310(c); *FLEX ANI Order*, Memorandum Opinion and Order, 13 FCC Rcd at 5012, ¶ 16. Either way, the IXC or the LEC that *violated the Commission's rules* by not properly implementing FLEX ANI should bear the cost associated with the violation of those rules, not the independent PSPS, who did what they could by subscribing to payphone lines and paying FLEX ANI charges as directed by the FCC. If AT&T has lost a portion of the profits it otherwise would have gained from payphone compensation "cost recovery," it should seek redress from the LECs, who, according to AT&T, failed to deliver FLEX ANI in accordance with the Commission's rules.

[19] AT&T does not assert that it took steps to ensure that it was properly placing its orders for FLEX ANI; or that it conducted testing to determine whether FLEX ANI was (footnote continued on next page)

from FLEX ANI failures; it puts further into question whether AT&T has an equitable right to recover at all. As a matter of equity, AT&T had an obligation to mitigate its damages. AT&T's failure to do so is another equitable reason why the Commission should not order a true-up. Independent PSPs should not be forced to refund compensation to AT&T if AT&T incurred losses only because it failed to take steps available to it to ensure that it recovered all of its dial-around costs from its customers.

Finally, the use of a surrogate actually benefited AT&T. It is generally acknowledged that independent PSPs had relatively high volume locations. Even if AT&T overpaid on the calls it did pay for, by avoiding per-call compensation AT&T avoided paying for more calls and ended up shortchanging independent PSPs.[20]

II. SPRINT HAS ALREADY RECOVERED THE COST OF DIAL-AROUND COMPENSATION FROM ITS CUSTOMERS

Sprint, in the Sprint Double-Recovery *Ex Parte*, similarly fails to provide any supporting evidence for its claim that it did not fully recover dial-around compensation costs from its customers. Again, even if Sprint did not ***fully*** recover its compensation payments, its entitlement to a refund, if any, should not exceed the amount that it failed to recover. But like AT&T, Sprint has failed to show that ***any*** of its compensation costs went unrecovered. Indeed, the available evidence demonstrates that Sprint did recover all its compensation payments for both the Interim and the Intermediate Period.

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working. AT&T does not assert, for example, that it followed the LEC procedures for activating FLEX ANI, such as by completing Access Service Requests ("ASRs") or completing Technical Questionnaires ("TQs"). *See* the Appendix to this letter, "FLEX ANI Implementation." In fact, the IXCs generally took a cavalier attitude to their obligation to order and test FLEX ANI. The IXCs' incentives and behavior regarding FLEX ANI are further explored in the Appendix attached to this letter, "FLEX ANI Implementation Problems."

[20] Assuming that some IXCs were unable to recover compensation paid, *e.g.*, on a surrogate basis because they failed to order FLEX ANI in a timely fashion, a concomitant result of the IXCs' careless attitude towards ordering and testing FLEX ANI is that IPSPs were not compensated on millions of compensable calls in the Intermediate Period. APCC believes that many payphones with very high call volumes were compensated by IXCs on a flat-rate, surrogate basis even though FLEX ANI was available. Many other payphones, APCC believes, were paid no compensation at all because IXCs purported to pay for those payphones on a per-call basis even though they had failed to properly order and/or test FLEX ANI. Any equity assigned to IXCs for non-recovery of costs due to FLEX ANI failure is counter-balanced by the losses suffered by independent PSPs due to IXCs' careless approach to ordering and testing FLEX ANI.

A. Sprint Recovered Its Costs for the Interim Period

With respect to the Interim Period, Sprint claims that it did not impose any *surcharges* on *end users* to recover the cost of dial-around compensation. Sprint fails to mention that, like AT&T, it assessed general rate increases on its end user customers, *for the express purpose of recovering the cost of payphone compensation.* In April 1997, Sprint raised its rates for a range of retail services by nearly 5%, and stated it was doing so in order to recover its payphone compensation costs. *See* Attachment 13 (Sprint's FCC tariff filing), and Attachment 6 (trade press article) ("Sprint recently raised its rates 'largely to compensate for the Order,' according to Larry McDonald, Sprint's manager of national media relations. . . 'I think we have told customers, and I think customers understand that when the FCC made this decision, the FCC anticipated that the bulk of this surcharge would be passed through to the customers,' Sprint's McDonald says"). These rate increases were assessed on certain types of calls regardless of whether the calls were placed from payphones. The Sprint Double-Recovery *Ex Parte* fails to mention this general rate increase despite the fact that it has been on the record in this docket for at least five years. *See* APCC's Second Report and Order Comments, Attachment 5 (August 26, 1997).

Sprint also does not reveal that Sprint assessed on its *wholesale* customers a $.15 surcharge for dial-around calls from December 1, 1996 to March 31, 1997, *see* Attachments 14 (Sprint's FCC tariff filing), 15 at 2, and 16 (notices to Sprint customers), and a $.35 surcharge effective April 1, 1997 (*see* Attachment 17 (notice to Sprint customers)). These surcharges were assessed for the *express* purpose of recovering its dial-around compensation costs. *See* Attachment 15 at 7 (notice to Sprint customers) ("Sprint's share [of dial-around compensation] is $4.97 per month per phone with an estimated monthly cost of $2.5 million. Due to this new cost, Sprint Wholesale Service Group has planned for a recovery system through a surcharge of $0.15 for certain types of calls originating on all payphones.") and Attachment 17 (notice to Sprint customers).[21]

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[21] The amount that Sprint recovered from the surcharges alone apparently exceeded by a wide margin the cost of Sprint's dial-around compensation obligations. In a complaint filed by the International Telecard Association ("ITA") (a trade association for phone card providers) and a group of phonecard providers, it was alleged that from December 1, 1996 to March 31, 2997, Sprint's surcharge of $.15 would cause Sprint to over-recover by more than $3 million. *See* Attachment 18 at 10 (ITA complaint). Similarly, complainants calculated that Sprint's $.35 surcharge would cause Sprint to over-recover for the period from April 1, 1997 through October 1, 1997 by $20,312,660. *See Id.* at 11. While the Commission never decided the complaint, the documentary evidence attached to the complaint, including Sprint's tariffs, demonstrate at a minimum that, contrary to Sprint's assertions, Sprint did assess surcharges on its customers in the Interim Period and did recover a significant amount of its compensation payments by doing so.

In addition to these retail rate increases and wholesale surcharges, Sprint's share of the $250 million in recurring annual federal access charge cost savings, which resulted from the implementation of payphone compensation, also enhanced Sprint's ability to recover its payphone compensation costs. *See* note 5, above, and accompanying text. Sprint also benefited from similar access charge cost savings at the state level, as well as commission cost savings from the displacement of 0+ calls by dial-around calls. *See* note 10 above, and accompanying text.

Sprint itself acknowledged that it was committed to adjusting rates as necessary to maintain an effective payphone compensation cost "recovery system" in place. *See* Attachment 15 at 1 (notice to Sprint customers). For example, Sprint explained to its wholesale customers that it "will continue to monitor the actual cost it is charged by payphone providers and compare costs to the amount collected. During the first year, Sprint will periodically adjust the recovery rate if actual costs are higher or lower than the estimated costs." *See* Attachment 15 at 3. The Commission should assume that Sprint recovered its costs since Sprint has not presented any evidence that Sprint's cost "recovery system" failed to achieve its objective.

B. Sprint Recovered its Costs for the Intermediate Period

Sprint also fails to support its claim that it did not recover the cost of dial-around compensation in the Intermediate Period. Sprint asserts that during the Intermediate Period it attempted to recover its costs by assessing a $.30 surcharge on end users. Sprint claims, however, that although the surcharge was implemented on October 12, 1997, it took time for Sprint to be able to assess the surcharge on end users and that Sprint therefore did not recover all of its costs.

Once again, Sprint's discussion of its "recovery system" is disingenuous. Sprint again neglects to mention that as discussed above, prior to instituting the payphone-specific surcharge, Sprint had already assessed a 5% general rate increase on end users for the express purpose of recovering dial-around compensation costs.[22]

Moreover, the Commission should not accept at face value Sprint's claim that the $.30 surcharge was assessed on end users only during part of the Intermediate Period because it took time for Sprint to identify payphone calls. Sprint was ***paying independent PSPs*** dial-around compensation on a per-call basis; Sprint was therefore clearly able to identify payphone calls for purposes of paying dial-around compensation. It makes little

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[22] APCC is not aware of evidence demonstrating that the surcharges and rate increases implemented in the Interim Period were reduced in the Intermediate Period. In addition, as stated above, IXCs saved $250 million dollars annually through reductions in access charges after the Commission adopted its dial-around compensation rules.

sense that Sprint would be unable to identify payphone calls for the purpose of assessing surcharges, but would be able to identify the very same payphone calls for the purpose of paying compensation to independent PSPs.

Sprint also claims that its per-call surcharge of $.30 was not sufficient to recover its administrative costs associated with dial-around compensation and costs of bad debt. Sprint's assertion assumes that it had no other means of recovering its dial-around costs from its customers. As discussed above, however, Sprint also recovered its dial-around compensation costs from a 5% rate increase on a broad range of call types.

The Sprint Double-Recovery *Ex Parte* fails to demonstrate that Sprint did not recover its dial-around compensation costs in the Interim and Intermediate Periods. Sprint's exclusive focus on surcharges assessed on end users improperly ignores other sources of revenue that Sprint used to recover its compensation costs. In addition, even Sprint's assertion regarding its ability to assess surcharges on end users is entirely unexplained and unsupported by evidence. Accordingly, in light of Sprint's own admission that it had a cost "recovery system" specifically designed to recover the cost of dial-around compensation, the Commission should assume that Sprint did indeed recover its costs unless Sprint presents convincing evidence to the contrary.

Sincerely,

Albert Kramer

Albert H. Kramer
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AHK/mjo

cc: Jeff Carlisle
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APPENDIX
FLEX ANI Implementation Problems

FLEX ANI IMPLEMENTATION PROBLEMS

The purpose of this narrative is to describe the Flex ANI implementation process. While AT&T has claimed it failed to receive Flex ANI, it has not detailed the steps it took or even generally asserted that it did what was necessary to order Flex ANI.

At the outset, it is important to recognize that Flex ANI is implemented at the local switch level (i.e., on a switch by switch basis), and is part of the LEC's access service. It must be ordered in accordance with access procedures.

AT&T HAD WEAK MOTIVATION TO ENSURE FLEX ANI DELIVERY

Furthermore, in most cases when IXCs order an access service, the IXC is paying a substantial charge for a service that fills an essential need of the IXC, and the IXC has a strong incentive to make sure that it receives what it is paying for. FLEX ANI is different. First, IXCs do not pay for the service: it is "free" to IXCs as part of the Feature Group D package. Even more importantly, the IXCs do not need FLEX ANI for any business purpose of their own. They use it only to track payphone calls for purposes of paying payphone compensation. Under FCC rules it is the IXC who tracks the calls and computes its own compensation bill.

Accordingly, the IXCs had no particular motivation to ensure that FLEX ANI is provided. If an IXC "forgot" to order FLEX ANI, or if the LEC failed to deliver FLEX ANI, all that happened was that the IXC did not track certain payphone calls and the compensation invoice it computed for itself was lower than it should have been. This was an economic benefit to the IXC. In short, during the Intermediate Period the IXCs had little or no motivation to ensure that FLEX ANI is delivered as ordered, and may even have had the reverse motivation.

Two important consequences for this proceeding flow from these predicates.

- Many IXCs failed to receive Flex ANI digit codes because they failed to properly follow LEC procedures for ordering the service once it became available.
- Where an IXC ordered the Flex ANI digit codes and failed to receive them, many IXCs took little action to correct the problem.

DID AT&T ORDER FLEX ANI ACCORDING TO STANDARD ACCESS ORDERING PROCEDURES

LECs generally require the IXCs to order Flex ANI pursuant to the usual access ordering process. While some allowed a slightly altered process, they still required the submission of Access Service Requests forms ("ASRs") and the accompanying Technical Questionnaire ("TQ"). In some instances, disputes erupted as to the proper procedure.

TRADITIONAL ORDERING PROCEDURES FOR FACILITY BASED SERVICES

The process for ordering access is governed by procedures developed by the Alliance for Telecommunications Industry Solutions (ATIS). The protocols and forms for ordering Flex ANI are contained in several sections of the ATIS Access Services Ordering Guidelines (ASOG). These sections provide, in excruciating detail, the information and forms necessary to properly process an order submitted by a carrier such as AT&T.

Access Service Request

The first step in ordering is the submission of the Access Service Request (ASR) form. The ASR is a 2-page form with 110 fields of information that detail the administrative and billing information required for the proper processing of an ASR.

The ASR must be prepared by the IXC according to the explicit instructions provided in the ASOG. This section is comprised of approximately 150 pages of material covering the specific requirements for a valid order. One ASR is required for each Carrier Identification Code (CIC), for every end office. There are specific provisions governing the submission of multiple ASRs for a service such as Flex ANI.

Technical Questionnaire

The second form required in a typical order for Flex ANI is the Technical Questionnaire (TQ), which provides critical technical information to the telecommunications switch technicians that program the service into the PSTN. These technicians, called switch translators, take the technical information related to the service order, and use it to alter the instructions to the computerized switches that route telecommunications traffic across the PSTN. As with the ASRs, the TQs are filled out according to the specific and detailed instructions provided in the ASOG, which is comprised of approximately 80 pages of material specifying in exacting detail the information that is required for the proper switch and trunk group modifications. The TQs contain 50 fields of information required for proper processing.

Testing Scripts

Once an access service is ordered and implemented by the LEC, both the IXC and LEC need to test the service to ensure it is operating as planned. Testing scripts are a vital part of the ordering and implementation process. Testing scripts should be provided by the IXC for all call types, for all switch technologies, as well as all testing requirements suggested from the various switch manufacturers.

Monitoring

In addition to above standard procedures found within ASOG, it would be expected that each Carrier would prepare implementation tracking and progress reports for each LEC, and also prepare post-implementation reports that track technical issues, until those issues are resolved.

AT&T has not stated that it followed the LEC and ATIS procedures for ordering Flex ANI. Indeed, given the history of bickering between the LECs and IXCs, AT&T in particular, *see Implementation of the Pay Telephone Reclassification and Compensation provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, 13 FCC Rcd 4,998, ¶ 16 and n. 63 (1998), there is substantial reason to believe that AT&T and the LECs were at odds over the procedure. At meetings of the Per Call Forum (a joint industry forum that formerly addressed per call implementation), these disputes were evident.

AT&T should be required to detail its efforts to order and implement Flex ANI before the Commission accepts AT&T's statement that it did not receive Flex ANI as a basis for excusing AT&T from its per call obligations.

WHEN WAS FLEX ANI AVAILABLE FROM THE LECS?

The LECs posted "network change disclosures" on their web sites that contained the date by which Flex ANI service would be available to carriers.

Ameritech	June 9, 1998	
Bell Atlantic	June 9, 1998	
Bell South	March 31, 1998	
GTE	Dec 31, 1998 June, 1999	96% compliance 100% compliance
Pacific Bell	June 9, 1998	

Southwestern Bell	Fourth quarter 1998	
US West	Dec 31, 1998	95% compliance
	June, 1999	100% compliance

WHEN DID AT&T ORDER FLEX ANI?

As indicated above, the LECs reported that they were FLEX ANI capable in almost all territories, with minor exceptions in the GTE and U.S. West territories, well before the Commission ordered dead line. APCC believes that many IXCs, however, failed, to complete standard access ordering procedures for FLEX ANI by the Commission imposed deadline. Before accepting any IXC's claim that it failed to receive FLEX ANI, the IXC should be required to present evidence as to when the carrier *actually submitted* the ASR and TQ's to each LEC.

ATTACHMENTS

ATTACHMENT 1

FROST & SULLIVAN STUDY

APCC

American Public Communications Council, Inc.

A... -3C

February 27, 1998

Honorable William Kennard
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

Dear Chairman Kennard:

I read with interest the reports that you have sent letters to the long distance industry leaders expressing your concern regarding their pricing practices in the wake of access charge reform. Specifically, their gladly accepting reductions in access charges, yet passing along to consumers Universal Service Fund, PICC charges and the like seems to fly in the face of earlier commitments made to secure reductions in access charges.

The payphone industry is experiencing similar problems due to abusive IXC pricing policies and misleading public statements which negatively impact consumers. Not only are we a victim of the overcharging and overrecovery on Universal Service Fund and PICC charges, but consumers have suffered as interexchange carriers have used their payphone compensation obligations as an opportunity to double and triple their recovery of their obligation to payphone providers while hiding behind what they characterize as an FCC mandate.

The long distance industry has estimated its total annual obligation for payphone compensation under the FCC's orders to be a little less than $1 billion. But look at what they are doing to consumers to recover that amount. Since 1992, carriers have influenced consumers to change their away-from-home dialing patterns so that 0+ calling from payphones has declined by over 60%. This is saving IXCs over $370 million annually in commission payments to payphone service providers and premises owners. Further, as a direct result of the FCC's payphone orders, LECs removed payphone elements from their access charge billings. This has amounted to over $250 million in annual federal access charge savings to the carriers. Intrastate savings are additional. Despite these savings, carriers still felt a need to raise consumer's rates to cover their payphone compensation obligations. AT&T announced a series of rate increases in March and April of 1997. Their press releases (attached) specifically said these increases were necessary to cover their payphone compensation obligations. An independent consulting and market analysis firm, Frost and Sullivan, has quantified AT&T's revenue gain from these rate increases at over $900 million annually. MCI and Sprint announced similar rate increases right on AT&T's heels. You can see that between rate increases and avoided costs, the IXCs have already recovered at least double their obligation. *Why then have they felt it necessary to also stick consumers with additional per call charges on their phone bills for payphone compensation?*

10306 Eaton Place • Suite 520 • Fairfax, VA 22030 • 703-385-5300 Phone • 703-385-5301 Fax

AT&T now charges all access code customers and toll free subscriber customers at least $.28 for every call originating from a payphone. MCI and Sprint charge their customers $.30 for the same thing. Worldcom now charges their customers $.30 for all calls from *any* aggregator location, including hotels, dormitories, hospitals, etc. because they claim they can not tell if the call is coming from a payphone.

No wonder consumers are upset! But their anger is misplaced. Instead of blaming the FCC and the payphone industry, as IXCs have cleverly manipulated them into doing, *consumers, and the FCC, should be looking at these outrageous pricing practices whereby IXCs are recovering well in excess of $1 billion in addition to passing on the direct cost of payphone compensation.*

Sincerely,

Vincent R. Sandusky
President

cc: Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
John Nakahata
Thomas Power
James Casserly
Kevin Martin
Kyle Dixon
Paul Gallant

Enclosures

[redacted]

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Tel 415.961.9000
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To:	Jim Hawkins, Co-Chair of the Payphone Communications Alliance Vince Sandusky, Co-Chair of the Payphone Communications Alliance
From:	Brian Cotton
Date:	February 26, 1998
Subject:	Long-distance company commission savings

Dear Mr. Hawkins and Mr. Sandusky:

Please find attached a spreadsheet model depicting the long-distance companies' savings in commissions to Payphone Service Providers (PSPs) due to the shift from 0+ dialing to dial-around calling from payphones since 1993. This model assumes that the average number of 0+ calls from a payphone would have remained constant had the 1992 law which mandated equal access from payphones, not passed. _Our conclusion is that the long-distance companies, industry-wide, have saved a minimum of $371.5 million in commission payments in 1997 alone from paying less in commissions to PSPs, due to a shift from 0+ to dial-around calls from payphones._

The estimate of the number of payphones installed in the U.S. market (1993-1997) is based on Local Exchange Carrier (LEC) reports to the Federal Communications Commission (1,694,000 in 1997), and an estimate of the number of independent payphones and payphones from LECs not required to be reported to the FCC (529,000 payphones in 1997). Note that our results for the industry-wide commission savings are conservative, since we used a conservative estimate of the number of payphones from independent and non-reporting LECs.

To explain this model in more detail, we first estimated the average number of 0+ calls made from a payphone in a month in a given year (C1), and multiplied it by the average commission paid for each 0+ call (M). We then multiplied this monthly figure by 12 months, and multiplied this result by the estimated number of payphones installed in the U.S. market in a given year (Q) to arrive at the total payphone commission paid by the long-distance companies (TC1).

Next, we assumed that the 1992 law had not been enacted. We conservatively estimated that the average number of 0+ calls from payphones remained constant at 51.02 for the analysis period (C2), and calculated the total payphone commission paid by the long-distance companies had the 1992 law not passed (TC2).

Finally, to calculate the amount of payphone commissions that the long-distance companies saved each year since the 1992 was enacted (Savings), we subtracted the actual commission payments (TC1) from the baseline commissions (TC2). Thus in 1997 alone, the long-distance companies saved $371.5 million in payphone commissions.

To extrapolate from these figures, if the number of payphones installed continues to grow past 1997, then the long-distance companies' savings should grow significantly.

Please do not hesitate to call me on my direct line (650-237-4315) if you have any questions about this material.

Sincerely,

Brian Cotton